

## Smart Regulation in times of COVID 19: An introspective preliminary analysis for its application in Ecuador

*Smart Regulation en tiempos de COVID 19: un análisis introspectivo para su aplicación en Ecuador*

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**ABSTRACT:** Better regulation is a public policy that governments implement to improve the quality of life of their citizens. These policies bring significant benefits to all market players, among the most palpable are innovation, administrative simplification, a clear commitment by the government, and competitiveness. A fundamental entity for the development of this type of regulation is the Organization for Economic Cooperation and Development (OECD), whose main objective is to create policies that improve the quality of life of citizens around the world. Among the members of this organization are first world countries such as the United States and Spain, as well as third world Latin American countries such as Mexico and Colombia, whose government administration serves as a model for the Ecuadorian people. It is because, without considering that their economies are not as large, developed, and stable,

they have managed with the commitment, perseverance, and responsibility to be supported by this international institution. Nowadays, the problem of over and deregulation that has remained in Ecuador. Since the beginning of its history, it serves as an axis of study to propose the implementation of regulatory improvement within its political system. In order to do this, it must be considering the principles of governance, proper preparation for its application, and the professionalism of all market players.

**KEYWORDS:** quality of life, law reform, development policy, cost reduction, development strategies.

**RESUMEN:** La mejora regulatoria es una política pública que los gobiernos implementan para mejorar la calidad de vida de sus habitantes. Esta política trae grandes beneficios hacia todos los agentes del mercado, entre los más palpables están la innovación, la simplificación administrativa, el compromiso transparente por parte del gobierno, y la competitividad. Una entidad fundamental para el desarrollo de este tipo de regulación es la Organización para la Cooperación y el Desarrollo Económico (OCDE), la cual tiene como objetivo principal el crear políticas que mejoren la calidad de vida de los ciudadanos alrededor del mundo. Entre los miembros de esta organización se encuentran países de primer mundo tales como, Estados Unidos y España, así como también países latinoamericanos de tercer mundo como México y Colombia, cuya administración gubernamental sirven de modelo para el pueblo ecuatoriano. Esto se debe a que, sin considerar que sus economías no son igual de grandes, desarrolladas y estables, han logrado con el compromiso, perseverancia y responsabilidad ser respaldados por esta institución internacional. En la actualidad, la problemática de la sobre y desregulación que se ha mantenido en Ecuador desde el inicio de su historia sirve como un eje de estudio para proponer la implementación de la mejora regulatoria dentro de su sistema político. Para ello, deberá tomar en cuenta los principios de gobierno, una buena preparación para su aplicación, y el profesionalismo de todos los agentes del mercado.

**PALABRAS CLAVE:** calidad de vida, reforma jurídica, política de desarrollo, reducción de costes, estrategias de desarrollo.

## INTRODUCTION

Some of the most convenient ways of defining the need for regulatory quality are the problems that exist in legal systems. Most of the times, antinomies, the abbreviation of laws, unfamiliarity with terms or legal provisions lead the creation of obstacles that avoid achieving social, economic and administrative well-being. The vast majority of these problems are due to the lack of the regulatory improvement mechanism in the creation of transparent and efficient public policies.

However, what do we call regulatory improvement? How can this concept be applied? Regulation is a manifestation of the power of those who have command over a defined territory. This type of externalization of power is translated into the procedure of creating norms to regulate the behaviour of a determined population. Within the field of regulation, it is vastly extended to different areas of society such as: social, administrative and economic. It is essential to analyze that this type of control is framed in two ways, the first a poor regulation. Meanwhile, the second materializes a regulation based on two objectives: the elimination of unnecessary policies and the simplification of administrative behaviour. This search for efficiency and effectiveness arises regulatory improvement as a demanding process whose focus is aimed at promoting the improvement of administrative processes and the quality of life of citizens.

The approaches to this study will involve the theme of regulatory improvement, the public policy that is the synonym of innovation as long as it is aligned with the accurate creation and application processes. Moreover, regulatory improvement also becomes versatile. It applies to all sectors of society from education, or the market, through the simplification of procedures that favour the citizens' lifestyle, to the point of carrying out constitutional reforms, strengthening competent institutions and promoting the participation of all the nation's members.

Nevertheless, under what circumstances the implementation of regulatory improvement is allowed? Governments understand the prevailing need to create specialized institutions in this type of regulation in order to ensure the stability of the market, the form of government and each of the economic agents. As the leader of this project, the Organization for Economic Cooperation and Development (OECD, n.d.), is presented as an international organization that was born in the sixties to focus on the development of beneficial policies orientated to enhance the lives of the world's citizens; its objective is to establish international standards that guarantee the best policies globally. That is the reason why it is a privilege that only the world's developed countries such as Australia, Canada, USA, Switzerland, Germany have reached and positioned themselves within the thirty-eight members of this organism. It must be mentioned that for certain Latin American and African countries that have been candidates, and now OECD's members were a real challenge and a demonstration that, regardless of the social, political, or economic situation of the nations, they can achieve it.

Thanks to this brief section and alluding to the theme that the academic article will address, Ecuador is a Latin American country with a history full of shortcomings at the government level that has set aside its purpose, which is to improve the quality of life of its citizens through public policies. Unfortunately, the lack of a leader oriented to the service of the people has caused an accumulation of corrupt regulatory decisions, triggering problems of scarcity of transparency, and complex processes in administrative procedures. Thus, the following questions arise, to what extent could Ecuador be part of this organization? What are Ecuador's development strategies to guarantee compliance with regulatory improvement?

Throughout this document, the economic, social and political situation of Ecuador, the incipient public policies created to introduce regulatory improvements and the current challenge for Ecuadorians of the 21st century will be considered to continue promoting efficient government responses to streamline administrative procedures. For this,

the context of Mexico and Colombia as countries that have entered the field of this type of regulation, the requirements to be part of the international institution specialized in improving public policies, OECD; as well as proposals that could empower Ecuadorian public officials, to construct a country with the spirit of excellent regulatory quality, efficiency and transparency. Some of these proposals will be guided to the Covid-19 pandemic, which has affected the whole world and for which it is imperative to create improvements to better cope with the current crisis.

## **I. THE OECD'S WORLD VISION FOCUSED ON A LATIN AMERICAN CONTEXT**

The Organization for Economic Cooperation and Development, OECD, is an international organization that operates among thirty-seven member countries. The OECD was created in 1960 in order to maintain and consolidate the objectives set by the former, European Organization for Economic Cooperation, OECE (OECD, 2012, p.15). This intergovernmental institution is responsible for encouraging and ensuring the formulation of feasible and advantageous economic, social and administrative public policies. In order to be part of the countries that make up the OECD, they must comply with three aspects: being a democracy, respecting human rights, and having an open market economy. In turn, the OECD encourages the generation of changes in the classic government strategy towards undertakings aimed at developing a country.

### **1.1 THE CHALLENGE OF BEING PART OF THE OECD**

Why is it challenging for Latin American countries to become members of the OECD? Latin America, unlike the states of the first world, has maintained a history full of obstacles that obstruct its path to development. Among the main problems, the dependence of underdeveloped nations on the economic leaders such as the United States, China, Japan, Russia, Germany, the United Kingdom, France, has caused

a relationship that does not allow the 'little ones' to ensure prosperous financial management, in other words, Ecuador, Bolivia, Paraguay, Uruguay, and other Latin American states have settled for maintaining their monetary stability through foreign capital and have forgotten to innovate their production methods or encourage mechanisms for technological growth, administrative improvements, reduction of poverty levels, among many more. (OECD, n.d.)

Additionally, another factor is the disproportionate relationship between excess imports and nullity of export of national products, which leads to the persistence of inequalities in society and obstructed progress. It is worth mentioning the inadequate distribution of state wealth and resources. Moreover, the basis of this fundamental structural problem that remains in these countries is unproductiveness, and social, institutional and environmental vulnerability.

Alluding to the lack of productivity, the types of products that Latin America develops have not changed for a long time, which reaffirms the notion that there is a lack of innovative ideas and incentives for change. For example, most of the countries of this continent have based their economy on the sale of raw materials, mining and oil extraction; even though these sectors are those with the highest competition in the world market. Similarly, there are no regulatory policies that guarantee the well-being of citizens, government efficiency, care for national products and the environment. Due to these reasons, it is a challenge for underdeveloped countries to belong to an international organization called OECD.

However, is it impossible to be a member of this organization? One of the OECD's main objectives is to diversify the productive sectors in Latin America, innovate and prepare state projects in each of these countries to achieve the most significant sophistication of administrative processes and the optimum quality of public services and government. One of the ways to achieve this goal is to improve their level of cooperation with other countries and to carry out the

necessary specializations so that once within the OECD, they only strengthen and fine-tune the processes they are already undertaking.

For a country to be a candidate or an OECD member, is required a constant process. Being part of the OECD not only involves fulfilling the mission, vision and values that the organization has, but also means to assume the responsibilities of having the status of a member of the organization. There are two ways to make up the OECD, the first is to present the candidature, and the second is to be invited by the Council of the Organization for membership. Subsequently, they perform an exam, in which they evaluate their practices on regulatory improvement and compare them with the practices that are considered the best ones. They also evaluate the capacities that the candidate country has to implement the organization's norms.

Moreover, to be a formal member, the country must ratify the accession (OECD, n.d.). In this way, it is seen that joining the OECD is not a simple process, but a demanding one where the country is fully committed to creating a culture of regulatory improvement policy and meeting all the objectives. As a curious fact, it can be mentioned that Lithuania was the last country to join the organization in 2018.

However, the notion of being a member of the OECD involves here some important peculiarities such as the procedure of previously being a candidate before becoming an official member. Currently, the new candidate to join the OECD is Costa Rica, a Latin American country that was invited on May 5, 2020, to be an official member of the OECD (OECD, 2020). In short, Latin America is a continent that has the possibility of improving and overcoming its precarious conditions, as it has been demonstrated by the four OECD members that have roots similar to Ecuador.

## **1.2 COLOMBIA AND MEXICO: SUCCESSFUL IN REGULATORY IMPROVEMENT**

Mexico, Colombia, and Chile are Latin American countries that are part of international cooperation created in order to build better lives, allow taxpayers to save, and promote liberal and more resilient societies and economies. (OECD (n.d.) para. 5) Undoubtedly, being a member of the OECD has excellent benefits for the countries that comprise it, among these are analysis and monitoring tools for the economy, society and environmental policies. Additionally, the OECD provides best practices and the search for standard solutions for countries with similar situations and realities; such as dialogue, internal or group consultations, and a consulting body, among others (OECD, n.d.).

The OECD understands that Latin America is a continent that needs to learn about politics due to its significant difference with countries that have much more developed economies. For this reason, it is essential to take into account the barriers that exist regarding the precarious infrastructure in Information and Communication Technologies (ICTs), the few opportunities for digitization education, and the high corruption that exists in governments. According to Corruption Perceptions Index 2019, published by Transparency International, an organization focused on society free of corruption; reveals in a study that the American continent has a score of 43/100 in the level of corruption, 100 being a clean society and 0 highly corrupt. Furthermore, it mentions that the region has failed to make significant progress in fighting corruption. Taking into account the Latin American descriptions already mentioned, we will proceed to make a brief description of the operation of the regulatory improvement in Mexico and Colombia.

Mexico also known as the United Mexican States, is a federation that is organized in the form of a representative, democratic, federal, and social republic. It is made up of autonomous states, its capital is Mexico City, and they are governed by the principles of its federal constitution (Navarrete Vela, 2008, p.132). According to this normative text, public



power and sovereignty belongs to the people and are executed through the division of powers: executive whose mandate is held by the President; legislative through Congress; and judicial by the Supreme Court of Justice. Regarding political representation, Mexico has a multiparty system, in which there is a plurality of political parties and, therefore, citizen representation. It is regulated by electoral institutions such as the National Electoral Institute, the Electoral Tribunal and Prosecutor's Office (Gómez Díaz de León, 2015, pp. 40 - 42).

Like many other countries, most of the public policies that have been created are mostly not efficient since they fail to maximize their benefits and generate higher costs. However, in 1989 the Government of Mexico began a process of regulatory improvement that has been consolidating as a systematic activity for the public administration of Mexico since it generates clear regulations, simplifies procedures and services, establishes institutions aimed at obtaining the maximum value of all resources and the optimal functioning of the commercial, industrial, service and human development sectors (CONFEMER, 2017, pp. 13 -15).

To start this process, Mexico was guided by the OECD, which proposes four steps for the application of regulatory governance: deregulation, regulatory improvement, quality assessment and the cycle of regulatory governance (Carballo, A. 2012). As a first step, the deregulation process began in the 1980s and ended in the mid-1990s when Mexico evaluated the excessive and unnecessary regulation that affected the freedoms of economic agents at the national level. Nevertheless, working more on conflicts, Mexico analyzed how obvious problems attacked the administrative system, such as the lack of principles of transparency, anti-competitive practices and corruption. Along the same line, different authors identify the broad benefits of deregulation, such as Correa and Girón (n.d.) who put forward the idea of deregulation that causes a positive impact and set an example about financial deregulation. It is known that the regulatory liberation of financial systems allows the flow of capital and innovation, which certainly favours

a society with control of its freedoms that with a proper orientation will lead to a development in society (para. 7). Mexico understood that simple changes at different sectoral levels would allow a great dynamism of activities and a reduction in regulatory problems.

However, a reform or also called regulatory improvement began in the second half of the 90s and the first of the 2000s. This reform progressively influenced different institutions through the deconcentration of power. One evident change was the administrative modernization of the Mexican urban municipalities. Among the advantages, Tamayo and De Haro report that “the number of federal business procedures decreased by more than 45% between 1996 and 1999” (p.4) On the other hand, paperwork was also reduced thanks to the essential requirements that were requested, improved performance and reduced transaction costs. By maintaining basic rules of the game in a strict sense, avoiding the requirement of excessively regulatory licenses or authorizations and evaluating the information that is necessary for it to enter the system, a change begins that will result in the effectiveness and streamlining of processes. With this first approach, it is understood how the implementation of regulatory improvements at the municipal government level can generate positive change within the entire state organization, not to mention whether efficient regulation extends to the entire country.

Starting from the two previous steps, Mexico continued with the evaluation of the quality of regulatory policy during the second half of the 2000s. This assessment has a rather demanding methodology that mainly includes two objectives. The first is the identification of the information that is mandatory in a procedure such as the requirements, the documents, proceedings, declarations, among others. The second is the estimation of administrative burdens which can be monetary or the cost of time (Presidency of the Council of Ministers, n.d.). The aim is to continue with a simplification of processes, in addition to a periodic evaluation called the regulatory quality analysis (ACR). Then, it should be understood that an

evaluation of regulation undoubtedly requires the intervention of tools such as ex-ante controls, ex-post controls, cost-benefit analyzes, assessment of the applicability of principles, among others.

Finally, during the decade of 2010, the institution of the regulatory governance cycle was made up of five steps, and four fundamental axes called the 4CS (consultation, coordination, cooperation, communication). Within these stages, the first one is planning; next developing policy strategies and public consultation; then review and design; after implementation and compliance; and finally, evaluation and monitoring. This process begins with goals, resources, capabilities and tools, continues with expert opinions and the search for political support. During the review and design stage, old policies are evaluated, and new ones are built to continue innovating. The next step is materialized with the applicability of the policies, and their level of compliance is monitored. Finally, the results become tangible after a constant and persistent control that always seeks the scoop for better regulation (Carballo, A.2012.p.35).

Bearing in mind the transition of implementation of regulatory improvement in Mexico, the General Law of Regulatory Improvement and the reforms of articles 25 and 73 of the Mexican Federal Constitution were endorsed, which consent to the creation of the National System of Regulatory Improvement in which, Mexico will display new regulatory practices, as well as policies, institutions, and tools; that go from the planning to the emission, execution and study of the regulations whose character will be viable and consistent (Geneva Serrabou, 2015, p. 6). Therefore, this fair and transparent regulatory system will actively encourage citizen participation and strengthen its permanence over time, seeking more significant benefits for society with the lowest possible costs.

Following, in April 2000, reforms to the Federal Administrative Procedure Law (LFPA) were approved, where the results demonstrate the transparency, progressiveness, and efficient development of the Mexican government. In

these reforms, two institutions were created that allow the consolidation of the regulatory improvement system. On the one hand, there is the Federal Commission for Regulatory Improvement (COFEMER), in charge of reviewing draft regulatory provisions and preparing regulations. As a second, the Council for Federal Regulatory Improvement, this is a consultation body that seeks to follow up on the implementation of regulatory improvement within the federation (Geneva Serrabou, 2015, pp. 8-10). Together they focus on ensuring the feasibility of public policies and seek to complement each other in order to improve government management in favour of the rights of the Mexican citizens.

Regulatory improvements have been implemented from the 1990s to the present day in different sectors: public, social and private, and have brought with them various benefits such as economic growth and development, both at the federal level and in the member states, and with the which, social welfare is guaranteed. Exemplifying, in the commercial sector, the regulations allow to build routes for innovation, such as the creation of companies, products, services; in turn, it is agreed to maintain a link with the principle of competition between the competitive balance of market players and high-quality regulatory standards. On the other hand, immersed in public administration, this policy creates opportunities to restructure energy, water, telecommunications, transport, among others (OECD, 2012, p.22). In other words, after improving economic and financial results, regulatory improvement has also met goals such as optimizing the quality of life, social participation, and democracy. In summary, this project that began with the aim of facilitating the lives of Mexicans, today, is a reflection of the effort to progress as a country and ensure with a valid government, security and compliance with the rights of its habitants.

To continue, Colombia is a South American country that has had a series of transformations in its form of organization of political power. Since 1991, as mentioned in the first article of its Constitution, Colombia is a unitary and decentralized republic that is organized in thirty-two departments and district

capital, Bogotá D.C. Its system of separation of powers is made up of the organs: executive, legislative and judicial; exercised by the Republican President who assumes the post of Head of State, government and the highest authority of the Public Administration; the congress that is made up of: the House of Representatives and the Senate; the Constitutional Court, the Supreme Court of Justice, the Council of State, the Superior Council of the Judiciary, the Attorney General's Office, and the courts, civil and military judges respectively. Colombia has a form of citizen representation based on political parties, which are characterized by the elitism and dualism of its two traditional parties: the Liberal Party and the Conservative Party, where the participation of citizens is demonstrated (Sanín Gutiérrez, 2002).

Colombia had several antecedents in terms of administrative simplification, the same that is a step towards achieving a policy of regulatory improvement. In 2014, the document CONPES 3816 laid the foundations for regulatory improvement in Colombia. This legal provision talks about the analysis of the impact of regulatory improvement. It indicates that the process will be carried out through five strategies: the implementation of the impact analysis, public and transparency consultation, institutionality, capacity building and inventory management. In this way, the AIN, or regulatory impact analysis, comes into effect in 2018 and becomes mandatory.

One of the main problems that Colombia had that made regulatory policy impossible to apply was the lack of knowledge about the tools for the application and implementation of the regulatory improvement. To solve the problem, they gave training, workshops, courses, guides, so that the administrators have the necessary knowledge in each area. In order to solve these conflicts, the AIN began to be applied in six entities as a pilot to see how it worked, analyzing in each one, what was the problem, the objectives, alternatives or proposed solutions, CBA, public consultations and the conclusions respective in the areas and entities (National Planning Department, 2017). Colombia's persistence to combat these obstacles led them to

seek these types of solutions that today have guaranteed their position as a member of the OECD. The key is to have the initiative to change and make it a reality.

A similar thing happened with the public consultation mechanisms that were not efficient because it took approximately seven days according to calculations by the National Planning Department. The solutions to this problem were the establishment of various public consultation mechanisms, the same ones that were applied through Decree 270 of 2017. In this norm, the time of publication, the response, the promotion of the participation of citizens and the annual regulatory agenda were compared and analyzed with the previous ones. Another solution was the SUCOP (Unique Public Consultation System), which will have the purpose of cooperation, planning, coordination, rationalization, communication and the traceability of the process. This project began in December 2016, aimed at four types of users: citizens, regulatory entities, supervisory entities and the portal administrator. The process of preparing the standards for public consultation consists of five stages, which are divided into Preparation, coordination, consultation, adjustments and final (National Planning Department, 2017). In this way, greater control was given to the way of applying the public consultation, and its streamlining was allowed.

Continuing, another difficulty that Colombia faced in pursuing proper regulation was that there was no inventory of the standards in an understandable way, there was no organization, nor due control or monitoring. This problem was since the population, and even public officials had a piece of imperfect knowledge and confidence regarding the administrative regulations that were in force. The solution that was implemented against this problem was the DUR (Single Regulatory Decrees), which consolidated the regulatory provisions into a single body containing the current regulations. In this way, it contributed to a better knowledge of the applicable legislation and gave higher speed to officials and citizens. Additionally, there was the formation of clear rules for the use, issuance and publication of administrative acts. Another solution was the creation of a

tool that measures the cost of the regulation, this to have an estimate of what the monetary values would be to assume, and to be able to generate recommendations about the associated costs. (National Planning Department, 2017)

Delving further into the complicated situation in Colombia, the government administration did not have joint competencies but were widely dispersed. For this reason, the establishment of an entity to supervise quality, promote regulatory improvement, and implement best practice mechanisms was proposed. Thus, dispersed competencies became a work of coordination between all levels of government. This project was born with an intersectoral commission for regulatory quality, and currently, it is maintained through decree 1052 of 2014. Consequently, the improvement of smart regulation developed, because Colombia did not only stay with the bases, as it was persevering and planned objectives to meet until 2018, such as extending this policy nationwide, implementing more tools for this improvement, generating more interaction between the various market sectors, generating more entities that issue and regulate the regulation. However, to what extent did it achieve this development on its own? Both COFEMER, OECD, OIRA-EE. The US, Regulatory Delivery, cooperated with various efforts to promote the administration and regulatory inventory that was in the process of being created in Colombia; always maintaining the objective of improving public policies in the country, so that they are prosperous and efficient (National Planning Department, 2017).

This whole process could not have been achieved without applying the principles of improvement and the cycle of regulatory governance. The principles were established to guide in some way the executive function and other levels of government towards better administration, these are: effectiveness, efficiency, necessity, legal certainty, transparency and public consultation, suitability, proportionality, simplicity, accessibility and responsibility. On the other hand, the governance cycle was created to materialize them and make them known according to the stages in which they are developed, the participating actors, the tools used, and the entities that

intervene in the different processes. The regulatory governance cycle revolves around six stages, which are: the regulatory agenda in the planning stage, the regulatory impact analysis (AIR) in the design stage, public consultation in the participation stage, previous concepts in the quality review stage, the official journal in the publication stage, and finally the ex-post evaluation in the evaluation stage (Committee for Normative Improvement - Council for Institutional Management and Performance, 2019).

## **II. ECUADOR: AN APPROACH TO THE CURRENT PROBLEMS AND THE POSSIBILITY OF ADMINISTRATIVE MODERNIZATION**

Ecuador is a country located in Latin America with land border territory with Peru, and Colombia. It is within third world countries and is organized in the form of a presidential republic. The organization of power is decentralized into five functions: Executive, Legislative, Judicial, Transparency and Social Control, and Electoral. Within the fundamental principles, the Ecuadorian government is defined as social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular (CRE, 2008, Art.1). As previously mentioned, Mexico and Colombia are social and Latin American countries that have managed to develop public policies aimed at improving their regulations, and Ecuador could do so.

Ecuador, as a secular state, is oriented to a significant intervention of the State in the social and economic fields. This philosophy of government predominates in the construction of states on the Latin American continent, the most unequal in the world due to its different conditions. Then, a criticism by Osorio (2018) is appreciated, who affirms that “21st-century socialism maintains the same classical principles of traditional Marxism, which limits the action of the market and attempts against private property” (para. 1)

However, socialism does not appear to be a problem as a whole. It is pertinent to emphasize that in the Mexican country socialism does not impede the implementation of regulatory



improvements. Fortunately, this brings the opportunity for Ecuador to follow these paradigms thanks to the similarities with Mexico and Colombia.

It is prevalent in socialism, the application of welfare policies supported under the opinion of John Rawls. However, these policies do not have a correct orientation for their application, so they cause a very indirect result to provide aid to the population. It is demonstrated by Corruption Perceptions Index 2019 which positions Ecuador in the 38th place, with 100 being the least corrupt index. In this way, it can be understood that there is a significant misuse of resources and poor coordination of assistance services for Ecuadorians. Unfortunately, the aforementioned ends up hindering the system instead of collaborating for efficient and agile development.

In short, the wealth of social and economic problems in Latin America and Ecuador do not allow the development of the Welfare State, which undesirably ends in a set of complicated, confusing, corrupt, and non-linear procedures.

## **2.1 THE ECUADORIAN REGULATION WITHIN A CRISIS OF PRINCIPLES OF EFFICIENCY.**

The “Covid-19” also known as “Coronavirus” is one of the most severe health crises worldwide. It has not only allowed the increase in mortality and infection rates but also establishes a strong instability in the economic, social and administrative sectors of each state. Contextualizing, in Ecuador, there are several problems derived from the pandemic, which are associated with the inefficiency of public policies adopted by the respective government bodies. Therefore, it is necessary to identify the circumstances in which the opportune use of the principles of regulatory quality has been avoided.

First of all, the principle of proportionality is considered, which is frequently used in the legal world, whether for regulation, sanctions, or restrictions. This principle guarantees the manifestation of power as necessary to avoid the excessive

use of resources and to determine that the regulatory agents only intervene when necessary. According to (Baiges et al., 2009), “the interventions must be appropriate and proportional to the problem or the existing risk” (p.39). Furthermore, this fact implies that there will be an optimal use of tools in order to maintain a clear objective with a quantified impact on the desired agents.

The problem in Ecuador concerning this principle is the excessive regulation that limits freedoms and, on the other hand, the lack of efficient regulation when there are situations that warrant it. Moreover, an example will be presented that demonstrates how, in certain situations, state intervention is not necessary since, if excessive regulation were started, the free and correct functioning of the market would be restricted, as the same as if the deregulation was implemented, it would cause a chain of negative impacts. Today, proportionality has been demonstrated at the national level in the classification of provinces according to the number of contagions in that territory. Consequently, the rules of estrangement for each province is according to the traffic light in Ecuador. This method shows that red identification means an area with a high rate of contagions, and the green light means a place where the virus has been controlled. With this practice, people’s freedoms who are at risk are limited to the maximum with measures rules such as curfew, while in the low risk of contagion areas, it is merely to regulate activities. Imagine, what would happen if the same regime of restrictions would be generalized nationally? Inevitably the economy would collapse, the inhabitants would demand proportional restrictions and the country would not cover with all the different needs of the whole territory. The key is to identify which sectors need more strict regulation and follow their life activities. As a solution within the scope of Covid-19 time safety measures, restrictions concerning the number of contagions appear to be the most appropriate handling. While estrangement measures are used globally, there are territories in which they are most necessary due to the collapse of health institutions. Developed countries are commonly better at managing the virus, while third-world countries are attacked by problems of mismanagement of funds and mismanagement of

cases during the pandemic. Also, it is necessary to ask: To what extent does the regulatory improvement allow the optimization of resources? The principle of efficiency is one that seeks the use of economic, political, and administrative instruments or mechanisms that distort as little as possible the objective of developing viable and pertinent regulatory standards. In other words, it is sought to rationalize the scarce resources of society in such a way that it is possible to satisfy the needs and claims of citizens.

Contextualizing, in Ecuador, this ability to achieve specific purposes with the minimum of human and material resources is deficient. Not only within the economic field and public spending has sought to apply this principle, but also in the public administration, materializing, streamlining the procedures necessary to access education, work, housing, credit, among others.

Last August 2018, the Procedure Efficiency Law that governs all Ecuadorians was proposed, approved and is based on preventing public institutions from requesting certificates such as copies of identity cards, academic titles, voting certificates, a document of criminal record, the more in order to access public procedures. However, even today, this regulation has not been put into practice because of the idea of requiring individuals the aforementioned legal provisions to carry out the procedures corresponding to the needs of a private, state, or of the same human being.

Applying the regulatory improvement and immersed in it the principle of efficiency, a solution to this problem lies in using the coercive power within this standard. Criminal punishment and a penalty fee of a value that exceeds the basic basket should be imposed on all the habitats, companies, or associations that request procedures that can be easily accessed through a government platform which could be created by specialized professionals, in systems and telecommunications. At this time, the following question must be asked: to what extent does the proposed regulation outweigh the benefits of the measure at its costs? Indeed, this policy will create a

reasonable balance between the advantage that the measure offers, and the purpose pursued. The new regulation will allow people to think carefully about whether they want to commit this infraction and, in turn, allow the participation of citizens to create trustworthy virtual spaces and that these are candidates to be taken into account and managed by the Ecuadorian state. Among other advantages, this project based on this adequate regulatory standard will promote the use of clean technologies and will be friendly to the environment.

Therefore, as indicated in the norm, it is pertinent, because it establishes a regulation following the principle of efficiency, accommodating the objective pursued to the limited resources of the public administration; and, therefore, it should be considered to be implemented in the future.

From this brief description, the principle of responsibility that must be assumed by the regulatory agents also appears. As is well known, the problems within society look for a responsible person to take charge when the inconveniences arise. However, what is desired under this principle contained by the regulation is to have competent entities that make deliberate decisions and support them under clear criteria that do not exempt the ignorant or corrupt decisions of the regulatory entities. In Ecuador, the legal responsibility for bad decisions has not materialized in the justice system, so the principle of responsibility has not been made present.

Overseeing justice in our country has become a utopia, especially since the beginning of the new democratic era, starting in 1979. Of course, corruption has grown since that time, the Administration of Justice has fallen and this homeland of ours in the claws of a lion that, together with his henchmen, managed the destiny of the country, leaving it socially, politically and economically destroyed. (Giller, 2009)

For solving the lack of application of the principles of responsibility, the solution is a regulation with clear rules. As an example, the country's criminal record on public officials such

as embezzlement, bribery, concussion, and illicit enrichment should be considered. There should be a severe and clear reform to the Organic Integral Penal Code to guarantee that those who are irresponsible with their obligations while they are at the service of the people, take charge of their actions and facilitate the process of judgment. The objective of strengthening penalties will certainly not be the prevention of crimes, but rather a better regulation that can be applied by prosecutors.

On the other hand, in the case of the agents in charge of regulation, they must also be responsible for the possible effects of their decisions, since they are materialized in laws applied to the entire society. In Ecuador, laws are approved by the national assembly and the President of the Republic, according to article 137 (CRE, 2008). However, the proposal to guarantee regulatory quality should focus on the creation of specialized institutions since it is not logical that when the regulatory body, in this case, the assembly makes a mistake, they are their judges. Based on this institutionalization, the principle of responsibility would be supported by specialists, who would considerably reduce the risks of administrative failures. As mentioned before, Mexico and Colombia have institutions such as the Federal Commission for Regulatory Improvement (COFEMER), SUCOP (Single System of Public Consultation), the Council for Federal Regulatory Improvement, in addition to laws that guarantee the optimization of resources and strategic planning in law formation.

In conjunction with the other principles mentioned, the coherence principle is included, which consists of maintaining internal and external coherence in rules. As for the internal part, it includes aspects such as previous memory, EIR, explanatory memorandum and articulated text; while external coherence refers to both formal and material conformity with the entirely legal system. Amplifying the explanatory statement, in Ecuador, it is found within the Constitution of the Republic in article 76, numeral seven literal l:

1) The resolutions of the public powers must be motivated. There will be no motivation if the resolution does not state the legal norms or principles on which it is based and does not explain the relevance of its application to the factual background. Administrative acts, resolutions or rulings that are not duly motivated will be considered null. The responsible servers will be sanctioned. (CRE, 2008. Art.7)

Even though the requirement of the principle of motivation presented in laws and the recitals of consideration in the country's regulations, it falls short for what should be its application. Along the same lines, Cejudo and Michel (2016) affirm that coherence in public policies is a situation that requires analysis, and it is not correct to understand it as something automatic or implicit. In this way, this principle is essential to solving widespread problems. (p.1)

As a solution for Ecuador, deregulation is a step that must be followed just as Mexico did in order to eliminate norms that generate antinomies in the system. Once regulated in the strictest sense, the control of standards will be more efficient thanks to the considerable reduction of legislation. Likewise, the current regulations due to the fact of being considerably reduced will be subject to more specialized control thanks to the bodies in charge. In short, this control guarantees that the legal system remains in unity and under the respective justification for each law.

Additionally, the principle of transparency also plays an essential role in making the regulations recognized by all interested and affected parties. For this to be effective, one of the mechanisms proposed is popular consultations, since, in this way, democratic participation is promoted towards the parties so that they know the phases of the processes to be developed. Often followed, it is substantial to inform and raise awareness of the duties and obligations of both citizens, the public sector, and other market agents. It is essential for this principle that the rules are clear, simple and understandable by all and that they

have guidelines for their entry into force (Baiges et al., 2009). In this way, regulations focused on the exercise of the rights and needs of society can be guaranteed.

In Ecuador, there have been several controversies regarding the principle of transparency. Even though there are laws on this issue or that it is inculcated in homes, it has been seen that, in this time of the pandemic countless numbers of problems have appeared our country, such as, several complaints or demands to public officials for the various outrages of illicit enrichment, surcharge, bribes, and others; that have not only been civil or administrative, several of them have reached criminal trials. Besides, it would be essential to mention that by not acting promptly to investigate the cases, those involved have left the country taking advantage of the pandemic situation. As a result, the problems continue hindering in the judicial system without a practical solution. Therefore, the country cannot develop policies that lead it to become a member of prestigious organizations, due to the lack of application of this principle. For this reason, it is considered essential to strengthen the entity that controls and supervises the capital and monetary movement of officials, called the State Comptroller General (Contraloría General del Estado).

Besides, there would be no doubt a reform of the Organic Integral Penal Code, which would establish severe sanctions when an official reiterates (in one or more occasions) the crimes mentioned. In this way, a change can be achieved little by little in the society in which one currently lives, where there are poverty, corruption and significant conflicts of interest. This reform, established an Ecuadorian political system based on transparency, will also fully satisfy the needs of this nation.

Another primary factor for regulation to be useful is the approach in which it is developed, for this reason, it must be oriented to the difficulties existing in the society to which it is implemented; therefore, the effects they bring can be minimized and solved. This principle indicates that a prior approach should be made based on the risks of the problem and focus on the most potential. It is also essential that, when creating

the norms or regulations to them, the loads they will have for the different sectors to which they will be applied are evaluated (Baiges et al., 2009). Thus, it is possible to foresee what may happen and change so that there is a better development of specific regulations.

This issue of Regulatory Improvement is a clear example of the non-application of the focus principle in Ecuador because a decree was simply made and the process was not followed up, in addition to omitting critical steps in the regulatory governance process such as constant monitoring and innovation. Therefore, it is clear that the government did not have a broader approach and vision of what it wanted to implement. It is the importance of always having clear objectives for today and the future known as the vision and mission of a policy, to know where it wants to go with the application of specific regulations created. For this reason, it is crucial to create an entity that reviews the regulatory proposals and verifies that they have a clear focus. Otherwise, they serve as a guide so that they indicate the appropriate process to be implemented, and thus, have better legislation. Referring to the Covid-19 pandemic in which the world is currently immersed, it can be seen how this principle undoubtedly acts, because governments must take into account what they must do in the nations so that there are no more infections or deaths. It is crucial that well-focused projects are put forward by the public administration to come out ahead of this pandemic. As an example, the change of traffic lights in the provinces or cantons could be mentioned because each sector must be analyzed very carefully to foresee the worst.

Alluding to the economic aspect, are there rules that regulate the behaviour of market agents? The guiding principle for companies and citizens is based on developing clear and applicable legal provisions that allow economic agents to obtain sufficient information during the pandemic period. Among these, it can be identified the data about the new market buying and selling methods during the health crisis, the methods by which the state ensures adequate protection of people's safety by using virtual platforms, and even the proper use of media. However, one of the most severe problems within Ecuador



is the lack of these public policies due to the appropriate dissemination of information, as well as the inefficient response of the state regarding control of the “free market” and scams within the networks.

One of the new challenges for the Ecuadorian government is the creation of sufficient information and communication technologies. Phishing, bribery, scam via mobile applications in supplies, suppliers, investments, and excess fraudulent sites are several of the problems that arise during the health emergency. In these times of considerable uncertainty, the “fraudsters” abuse the state of unpredictability created by the government bodies during the presence of “Covid-19”. Victims are generally contacted through the telephone network, email or social networks to make deposits or bank transactions to false accounts in exchange for non-existent products or services.

Then, the creation of a regulation that controls free competition in Ecuador within virtual platforms is proposed. It must contemplate that each natural or legal person who wishes to promote its ventures electronically must meet a series of requirements. Exemplifying, the institution or individual interested will need to present the necessary data to corroborate its legal existence, second, the certificate of guarantee of products or the service to be promoted will be presented, the webspace where the visualization of what is being offered will be validated and finally, a sales record will be included for all suppliers. This project will ensure that consumers buy with knowledge and wisdom about what the various institutions offer and are sure that these are produced under safe, viable, and transparent standards.

In conclusion, the principles mentioned above allow state authorities to create public policies based on efficiency, transparency, responsibility, coherence, orientation to citizens and companies, proportionality, and focus, in addition to those that countries wish to adopt. In this way, the generation of precise legal provisions, simplified procedures and services will be achieved, as well as active institutions aimed at obtaining benefits with the lowest possible costs.

Thus, it is clear how the ideas are expressed on written paper; however, their execution falls short. Nonetheless, the positive side of the legal base already explained allows us to be one step ahead since planning is set out in the decree mentioned above. Although currently the benefits of this decree have not been realized, hope remains for those who assume the command in the coming years.

The second step to take is to consolidate the principles of government according to the nation concerned, taking into account transparency and the participation of all those affected by politics to avoid a conflict of interest. It implies creating ways for the population to which it is applied to contribute to the regulatory process with proposals or analysis of these. It is relevant to mention that the governments that implement the policies must carry them out clearly so that the parties affected are aware of their obligations and rights.

If we apply this recommendation to Ecuador, the most important and central part of the process is transparency. Therefore, it would have to improve in the fight against corruption, so that as a country, a better policy can be implemented and adjusted to international standards. For this to happen, the recommendation on ending corruption and restoring confidence in Transparency International policy should be followed; where it is mentioned that to promote the integrity of the political system, it should be a management of conflicts of interest, control financial policy, strengthen electoral integrity, regulate the activities of the municipalities, agree on preferential treatment, empower citizens, and reinforce checks and balances (Transparency International, 2020). Following these steps, Ecuador could have less and fewer corruption rates and a more balanced economy.

On the other hand, when making or having a proposal on public policies, the principle of approach should be kept in mind so that these regulations have an orientation more attached to the reality in which society lives, to the economic situation, and to understand everyone who is affected by what their purpose is and what will be accomplished over time. Likewise, together

with this principle is that of coherence, since, in order to have clear and understandable rules, its presence is undoubted. Additionally, efficiency and agility in any process will always be paramount so that it has the expected reception and thus be able to develop more projects at the same time. Also, it is necessary to mention that responsibility, proportionality and orientation are fundamental axes in the creation, planning or reform of any project. By applying all these principles in the country's development policies, the positive change generated in society can be seen.

## **2.2 A DEVELOPING COUNTRY TOWARDS REGULATORY IMPROVEMENT**

It is worth noting the importance of formal regulatory policies, that is, issued by the executive and promulgated by the legislature so that they are homogeneous for all levels of government, and not that these entities or instances create their initiatives or proposals regarding regulatory improvements. In this way, there will be a comprehensive regulation for everyone, and there will be no problems of inconsistencies between regulations. For the correct implementation of this policy, a highly transparent and decisive commitment is required to achieve the objectives that the OECD set out in the Council's recommendation on Policy and Regulatory Governance in 2012 to progress with them.

Furthermore, these policies must express clearly and concisely the procedures that each entity must follow to design the regulations in each field that is needed. The propitious thing so that the countries strengthen their capacities in diverse areas in quality and regulation is that they follow the recommendations of the Council on Regulatory Policy and Governance, an advisory body of the OECD. It was given in 2012. It highlights 12 steps to follow for both member countries and candidates as a piece of advice.

Regarding the first step, the total commitment by the government to have a good quality of regulation is part of the basis to start the process of change. The need to have a leader in

the face of all these reforms to guide the process is undoubtedly imperative since it drives constant change from the centre of government. Thus, the initiative must be backed by practical objectives to ensure that the benefits outweigh and justify the costs.

For the applicability in Ecuador, on May 4, 2018, decree 372 was promulgated aimed at declaring state policies about the regulatory improvement and simplification of procedures. Additionally, this decree was supplemented with the provisions of the National Development Plan 2017-2021. However, the issue of regulatory improvement is only mentioned three times throughout the document, which shows that it has not had a genuine interest in changing the country's administration problems (Moreno, 2017). Based on this decree, it is identified that the National Secretariat for Planning and Development outlines the stewardship and regulation in matters of regulatory policy, the creation of a Single National Registry of Procedures and Regulations is also required. It is stated that the creation of the Interinstitutional Committee Regulatory Policy and Simplification of Procedures will promote regulatory policy, as well as the elimination, reduction, optimization, simplification and administrative automation and procedures in the Central, Institutional Public Administration, and entities that depend on the Executive Function (DE- 372, 2018).

As a third step, the institutionalization of entities or mechanisms that supervise the regulatory improvement process must be part of reality. Decree 372 establishes the Inter-institutional Committee for Regulatory Policy and Simplification of Procedures. According to article 6, it is mentioned that:

Create the Inter-institutional Committee for Regulatory Policy and Simplification of Procedures, as a collegiate body that will have the purpose of coordinating, promoting and cooperating in matters of regulatory policy, as well as in the elimination, reduction, optimization, simplification and administrative automation and procedures in the Central, Institutional

Public Administration, and entities that depend on the Executive Function, in addition to other public sector institutions or levels of government (DE-372, 2018).

Although this institution would have the initiative to act, there are obvious problems that must be combated. As the strongest corruption is identified, this negative aspect affects the rule of law and generates legal insecurity that causes a lack of confidence in the different forms of manifestation such as institutions, governments and law. In order to compete against this problem in Mexico, Pardo (2007) states that “by 2004, 161 federal government institutions had transparency and anti-corruption programs, more than 4,000 improvement actions were carried out in 378 processes in them” ( p.8). In Ecuador, a favourable ground must be prepared for the implementation of regulatory improvement, and that step is to eliminate the minimum harmful and corrupt agents of the public administration.

In addition to the Inter-institutional Committee for Regulatory Policy and Simplification of Procedures, there is a need to have an organization in charge of reviewing public policies. Although the coordinating body already exists, it is always necessary within the process that there are entities in charge of control, resource management and also the supervision of incorrect actions. In Ecuador, that institution on oversight does not exist, and it would not be convenient for the same committee to be a judge and party to its actions. It would not be feasible to grant this power to the National Secretariat for Planning and Development since the system would be overloaded and it would not fulfil its functions.

A regulatory impact assessment also called an EIR, should be integrated into the fourth step. This evaluation should be carried out in the early stages when planning and formulating policies. Also, it is essential to consider the different requirements to which the regulation will be applied and to determine the best ones from the different approaches. The Ecuadorian state has within its constitutional body in Article 76 number 7 literal L, the principle of motivation in which it

is stated that the norms, established principles and facts on which a legal provision is founded must be incorporated in any resolution. It will ensure that each administrative act, project, policy contemplates a substantial objective that is adequately supported and expressly stated.

However, is this aspect sufficient for regulatory improvements to be implemented? The answer is negative because associated with this article. We find art. 136.- Requirements for the bills of the Constitution of the Republic of Ecuador and art. 56 of the Organic Code of the Legislative Function, where it is determined that the presentation of bills must belong to a single subject, will present an adequate explanation of reasons for the legislation and should be articulated. In none of these guidelines is the current trend that dominates the market, the Cost and Benefits Analysis “CBA” that has already been implemented by other countries such as Peru, Mexico, Colombia, Uruguay; and that it has presented improvements in its administrative processes by generating unique potential in developing countries, since this system adds quality, transparency and efficiency to regulations.

The first move that Ecuador should make to ensure that there is a pertinent regulatory evaluation is to propose an amendment to art. 136 of the Constitution, which mentions the requirements of the bill. In this, the CBA method will be incorporated, and it will be established that both the approvals of general laws and the resolutions that have been proposed in the legislative sector prepare a meticulous study of the opportunities and consequences of their validity together with the due explanation of reasons. The purpose of this solution is to avoid any type of future problems that affect the administration and regulation of state institutions and the lives of Ecuadorians.

These mentioned points are closely related to the fifth step in which systematic reviews of the inventory should be carried out based on the proposed goals, taking into account a cost-benefit analysis in order to meet the objectives set when designing the policies. The proposed amendment will allow the methodology of the “Cost-Benefit Analysis” to evaluate the

advantages and impacts of the bills and, in this way, provide the legislators with the necessary tools so that they can debate with more information the future laws, resolutions, administrative acts and public policies, to be approved or repealed.

Furthermore, the new legal provisions of Ecuador will always have a legal basis, be under the principle of motivation, have arguments that support and justify legislating on a particular matter, and the objectives to be achieved. This new system will demonstrate the existence of the obligation of citizens to carry out a cost-benefit analysis with the four critical stages.

The sixth step is to periodically publish reports on the performance of policies, programs, and enforcement authorities. It would be appropriate to indicate in the report to the nation, the same that is presented by the President of the Republic under article one hundred forty-seven number seven of the Constitution. It should be emphasized that first, a report will be presented by the entities and authorities in charge of each area to the President, and later this through the report on compliance with the guidelines proposed at the beginning of his presidency, and then those he has for the next year.

Developing formal, clear and specific policies with detailed functions to give confidence to the parties about the decisions made, is the seventh step. Consistent and impartial criteria must be taken into account, without conflict of interest or other undue influences on the processes for ensuring the best policy application. Besides, applying the previously mentioned principles and evaluations of regulatory impact analysis and cost-benefit. As a consequence of this application, it will be seen that citizens strengthen the bond of trust with politics and the system.

Following the eighth step, the inspection of the legality and justice of the processes and decisions made by the entities that have the jurisdiction for the issuance of regulatory sanctions occurs. Additionally, it is ensured that those to whom the policy is directed have access at a moderate cost and have

the necessary knowledge about the policies and projects to be implemented. These process inspections should be carried out by the authorities in charge of each entity in different areas. Moreover, later the inspections on the decisions of the authorities should be analyzed by the President of the Republic. In this way, all the people in charge of the process and decisions are analyzed to have better benefits and decisions, and thus the citizenry will be satisfied knowing that both the processes and the people in charge must have reviews, and consequently, conflicts will be avoided.

Within the ninth step, the elements mentioned previously in the fourth and fifth aspects are reiterated; where management evaluations and strategies in the implementation of regulatory policies must be continuously carried out in order to ensure that these policies are correctly orientated and accomplished. It will be done with the new and due Cost-Benefit Analysis system.

Upon reaching the tenth step, it aims the coordination between the supranational, national and sub-national levels, since in this way there will be regulatory coherence for the entire territory and conflicts will be evaded. This step is applicable for the previously explained institutions: the first as a coordinating body and the second as a supervisory body. Coordination between institutions is essential to avoid contradictions and keep their functions adequately established.

In order to propose this coordination between institutions, the respective functions of both will be considered. In the case of the Inter-institutional Committee for Regulatory Policy and Simplification of Procedures, it has eight functions, among which are promoting plans, projects, programs, inter-institutional methodologies for regulatory improvement and administrative simplification and procedures; approval of the National Regulatory Policy Plan and the National Simplification of Procedures Plan; evaluation and monitoring of compliance with the National Regulatory Policy Plan and the National Simplification of Procedures Plan; the coordination with the entities of the Executive Function, the systematic and permanent



survey of the administrative procedures and procedures to identify those that require deletion and simplification, as well as their updating, coordination with the other functions of the State and levels of government, the alignment of its regulations and procedures with the objectives of regulatory policy, administrative and procedural simplification, and the application of policies, methodologies and tools developed for this purpose; coordination with the private sector and academia; the identification of unnecessary procedures in its relationship with users, as well as the progressive simplification and digitization of its services; and, the other attributions that are assigned by the President of the Republic. (DE-372, 2018).

On the other hand, in the case of the inspection institution, it is also convenient to establish its functions. It would be considered appropriate for this institution to have similar functions as the General State Comptroller's Office, but they will only be in charge of the committee. Among the main ones is directing the administrative control system for regulatory improvement, which is made up of internal and external auditing, and internal control of public sector entities that have the resources to streamline procedures. As a second, but not less important, the function is to determine criminal administrative and civil responsibilities as well as indications of criminal responsibility, related to the aspects and actions subject to its control, without prejudice to the functions that in this matter are proper to the Attorney General State (Fiscalía General del Estado).

The eleventh step is about promoting the performance of regulatory policy management at different levels of government. As a pilot plan, the option of initiating regulatory improvement processes is proposed in the cities with the most significant administrative burden, such as Quito, Cuenca and Guayaquil.

Finally, the twelfth step is concentrated on developing timely regulatory measures in which it must be taken into account and cooperate within international regulatory standards; the purpose of this process is to ensure a proper

application of the regulatory reform in each administrative area. For this, countries like Ecuador that seek to undertake the process of regulatory improvement require the support and monitoring of strategies proposed by the OECD.

It is essential that the Ecuadorian government develop the document “Skills of the OECD” (OECD, 2012, pp. 49 - 50) in which the strengths and weaknesses within the public administration and management of Ecuadorian state policies are analyzed. In this way, it will be possible to recognize if there is the possibility of activating competences within the market or if it is appropriate to create spaces for intellectual exchange in which ideas can be translated into regulatory improvements so that these, in turn, achieve the objective of consenting to the adequate living conditions for people, the simplification of administrative procedures, and the reduction of unnecessary costs in other government acts or actions that do not favour effective progressivity in the administration of Ecuador.

Analyzing the background of this method, it is worth exemplifying the case of Mexico, a member country of the OECD, which used this regulatory system to pose challenges within social, economic and administrative areas, and which should be an example for Ecuador (OECD, 2012, p. 52). It has been proposed to improve the level of capabilities of compulsory education students in order to increase access to quality higher education and that their citizens have the same employment opportunities as others and, above all, are fully informed about the actions taken by the Mexican authorities, the context of their country, and the ways to improve specific guidelines in the public administration and within the social sphere.

As a second aspect, they have considered the possibility of eliminating the existing obstacles between the scopes of supply and demand, since they wish to promote the activation of the formal market. At the same time, the aim is to reduce informality rates every day, thus promoting the effective enjoyment of human rights, such as decent work. Finally, alluding to administrative management, the mission of ensuring collaboration between the Government and other interested

parties to achieve better financing from the public and private sectors for the elaboration of projects or public policies is presented.

Continuing, Ecuador can not only apply the method used by Mexico but also, if it decides to be part of the OECD, it will have the possibility to sign agreements or conventions within its sphere of competence and importance, with specific international organizations and other countries around the world that they provide support and are relevant. For example, Canada signed the Trade, Investment and Labor Mobility Agreement (TILMA) or the Internal Trade Agreement (ICA) that favours entrepreneurial ventures and international business. Just like Mexico in the State of Baja California, sign the Business Service Center (CAE) to improve the balance between supply and demand, or be part of COFEMER to streamline the procedures and services provided by the state government (García Villareal, 2010, pp. 35-36). As has been made visible, there are several standards that the Republic of Ecuador could adopt to achieve an effective regulatory policy.

In summary, the formulation of regulatory policies carried out by each of the countries around the world and members of the OECD must follow a series of steps in order to achieve a suitable application and execution. These range from evaluating the political system of nations, through the analysis of governance methods, to the suppression, merger and modification of individual administrative acts or projects will guarantee clear, public, and transparent regulations for its citizens.

### **III. VIABLE PUBLIC POLICIES, THE NEW CHALLENGE FOR ECUADOR**

At the same time that the principles already explained and the process framed in the twelve steps must be applied, it is convenient to add more recommendations. Blaiges, Gibert, Pellisé de Urquiza and Tornabell (2009), highlight different ways to simplify processes that can be applied together (p.36-

37). Then they will be expanded, taking into account the strategic planning of development tactics for Ecuador.

A correct regulatory improvement application in Ecuador requires a series of guidelines. It is necessary to eliminate regulations that are not indispensable or essential in society, then, the reduction of the burden of legal provisions that impede the correct development of market agents within day-to-day processes must be investigated. Finally, as a new alternative, it is crucial to examine public policies to merge them and learn the extent that they can reach together.

For this, it is necessary to carry out an express study of the administrative acts or projects created in which the number of beneficial rules can be separated in terms of those that are deficient and little applicable. As an example, referring to the margin of manoeuvre of the Superintendency of Banks in Ecuador, this should include the risk rating agencies that, according to the regulations, must follow a rotation every three years, which instead of promoting professionalism and dynamics in the finance sector has produced a market stagnation. The reason is that despite the advantages they bring, their negative externalities are higher. The rotational change of these has prevented the adequate information to be provided to foreign investors about the stock market, credits, shares, among others, of Ecuadorian entrepreneurs. Therefore, most of the qualifiers due to ignorance have brought with them several disadvantages for the economic development of the country. Given this circumstance and with the help of regulatory improvement, the term of the three-year rating agencies should be eliminated, or, in turn, this regulation should be merged with the laws that control companies. In short, as evidenced after carrying out an exhaustive study of regulatory policies, the suppression of them should be promoted, their content should be modified, or, at the same time, joining with others at the same area of competence should be allowed.

In the simplification of processes to comply with the regulations, forms, requests or inspections of information that is not essential should be eliminated, the time to complete the

forms and the frequency of requests for different procedures should be reduced, among others. The correct application in the country should be guided by Executive Decree 372 and previously mentioned recommendations, just as other OECD member countries have done. As it is known, in the country there is an excess of obstacles in which for a person to be able to carry out the due process or administrative processes, several requirements are required, or a significant amount of time needs to be used to carry them out. With this in mind, if these procedures are made feasible with the implementation of new methods to minimize time, people would be more satisfied to have their documents, requests and other procedures faster. It not only helps people who require a service but also favours each entity, company and other institutions so that they have a better internal and more agile organization.

Another critical point is the ability to share information with market agents on the new regulatory policies. Consequently, the Ecuadorian government management must provide the most appropriate methods so that the principle of publicity found in article thirteen of the Civil Code fully complies. If everyone is duly attentive to the new regulations, each citizen will be aware of how the public sector will undertake new procedures, projects, and may even propose new means of creating regulations. One of the advantages of insightful communication and instruction is that confusion over administrative acts, public administration processes, or policies that govern people's lives is avoided.

Additionally, communication and information technologies are an undoubted advance to streamline processes and considerably reduce administrative costs for both users and public officials. In the context of Ecuador, technological connections do not seem to have such speed and coverage, as explained by the Global Connectivity Index (2019) where it is verified that Ecuador is the number sixty-seventy-nine country, with a score of thirty-seven out of one hundred twenty compared to the connectivity of other countries. Ecuador undesirably falls below the world average due to its difficult geological formation filled with mountains and valleys. It is well

known that this third world country, which is in its first stages of development, both technological and commercial, has the opportunity to improve as long as the implementation of ICTs is presented as a future objective of governments.

However, it is necessary to propose real solutions within this field in which Ecuador is located; and use the tools that exist in that territory. As a more substantial example, web pages are presented that are equipped with a user-friendly and understandable system that has a clear division of procedures and allows communication with those in charge to solve problems. The pages must have a section on online consultations, related procedures, information download and a communication chat. As another alternative, the creation of applications for smartphones is presented, which have many functions to carry out processes, upload documents, request information, among others. These two options are already used in Ecuador for different services, so at present, the challenge is based on disseminating and perfecting their usage.

Both the applications and the other measures need to be explained correctly to promote their use and prevent people from going to places to request information. Television is a valuable resource and the simplest that can be used by the Ecuadorian population. Therefore, the news channels carried out at the national level should undoubtedly be in charge of explaining how the innovations in-process work. Additionally, it is essential to emphasize that adolescents have a different market segment than the rest of the population, so information through social networks is presented as an efficient form of communication for those who are just beginning their lives in legal procedures.

However, the advantages of technology are proven worldwide, designing electronic forms, using electronic processing or offering global service portals to companies on the Internet are opportunities that frame the speed of processes thanks to ICTs. Since the Covid-19 crisis, the internet and platforms like Zoom, and Microsoft Teams have become the tools of work and study worldwide. Countries that have

functional connectivity from online platforms have had healthy development in their day-to-day activities as well as in the administrative procedures. However, countries such as Ecuador, who have been forced to use platforms to make online payments among other procedures, unfortunately, it has not always gone as expected as the country was not prepared for this online service improvement. The social impact of these innovations materializes in the dissemination of culture, in enhancing social participation, and in emphasizing disadvantaged communities (Pérez and Sarrate, 2011, p.2). Along the same lines, it is still affirmed that ICTs collaborate with the transfer of knowledge, precisely this function is critical for regulatory improvement since the dissemination of information allows the community to participate efficiently and fully streamline procedures.

When talking about improving the information they provide to the members' community, they should make guidelines more transparent, more productive, and accessible to citizens, companies, and others. If it is necessary to rewrite the existing guides to make them simpler and make them available to citizens through platforms, the risk must be taken by the government. Besides, giving the data on time, because many occasions, the information obtained by the public administration is belated. As an example, it can see what is happening with the pandemic and the rate of infections and deaths. The information that the citizens receive is not timely from the government. The first to provide information is the media, which by the way is not known whether the information is accurate, but since they do not have access to valid data from the public administration, citizens trust in the one provided by different media. It leads to residents losing confidence since other institutions or media give them the same information in advance and effectively.

## CONCLUSIONS

From this brief review, regulation is understood as a set of norms that are oriented to the various social, administrative and economic activities of the society. In order to achieve an adequate implementation of regulatory policies, the OECD emerged as a leading institution in the improvement of administrative systems to guide globally the nations interested in improving the quality of life of their citizens. As it has been mentioned throughout this work, the benefits of this regulatory improvement lie mainly in two aspects, the simplification of administrative procedures, and the streamlining of these while reducing all kinds of costs. Along this same line, Colombia and Mexico have been two Latin American countries that have managed to form part of this regulatory improvement application and therefore have provided a holistic vision for Ecuador to follow in its steps.

However, it has been shown that the path to implement regulatory improvement and become part of the OECD is demanding since it imposes the use of different principles, the institutionalization of companies specialized in the subject, and also the creation of strategic planning departments. It is essential to mention that for the Latin American countries to reach this prestigious organization, it has been a difficult challenge, but not an impossible one, which certainly leaves Ecuador the possibility for the future. Nowadays, this challenge continues growing due to the global health crisis, Covid-19. This serious health problem has shown that those with proper management of funds and resources are the same ones that have coped with the contagion population. Unfortunately, those in the course of development have lamented severe consequences such as a high death rate. It is because the OECD recognizes the administrative shortcomings of the Latin American continent, so there is a full degree of cooperation to promote the initiative for regulatory improvement, which is undoubtedly a point in favour for Ecuador.



As demonstrated, a crucial part of the work is based on two countries that have achieved regulatory improvement and also active members of the OECD, Mexico and Colombia. Despite the difficulties at the government level and the long history of bad regulatory decisions in the countries as mentioned above and also in Ecuador, a series of principles are presented together with their possible application, for avoiding or repairing their lack or excessive implementation. In practice with this objective, the real problems and solutions for Ecuador have been raised in parallel in order to fight against the crisis of regulatory principles such as responsibility, coherence, proportionality, efficiency, and transparency among those already mentioned. Under the Colombian and Mexican paradigms, and the guidance of the guiding axes of the OECD, Ecuador will undoubtedly be able to be one of the winners in the regulatory improvement and become a member of the OECD in the future.

Thus, after this thoughtful analysis of the regulatory improvement for its application in Ecuador, the option is outlined so that the Ecuadorian terrain opens up to the opportunity to be efficient in administrative procedures. The opportunity continues in Ecuador thanks to the government of Lenin Moreno, that during the period from 2017 to 2021 promoted the initiative for regulatory improvement, in its first steps. The key to success lies in putting into practice the strategic planning already demonstrated in Lenin's decree; also in institutionalizing the proposal through the Inter-institutional Committee for Regulatory Policy and Simplification of Procedures; and finally in the creation of an entity in charge of the inspection in case of errors. As a complement, Ecuador must promote innovation to aspire to reach the major leagues in which the countries are part of the OECD.

In short, different organizations continue to search for the minimum use of human and material resources, in order not only to leave the idea on paper, but also for Ecuador to carry out the initiative with visible results. This Latin American developing country has the support of the most notorious examples and paradigms explained, Colombia and Mexico.

Finally, regulatory quality broadly defines the functioning of society, so the existence of clear, public, and precise rules that are in line with reality is essential. Although it has been explained that Ecuador has a deficient crisis in its principles, it still has the challenge of training its citizens in a culture of regulatory education to positively activate the economy, public administration and lowering the system's transaction costs.

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